

## Chapter Two ♦ Relevant law and regulations

### INTRODUCTION

#### Overview

- 2.1. This chapter provides an overview of the legislative and regulatory context for the EIA and consenting process for the London Resort project.

### INFRASTRUCTURE PLANNING

#### Planning Act 2008

- 2.2. The Planning Act 2008 (the '2008 Act') introduced a new consenting regime for the development of nationally significant infrastructure projects (NSIPs) in the fields of energy, transport, water, wastewater and waste. The intention of the 2008 Act was to speed up the delivery of NSIPs through a consenting process that incorporates:
- extensive pre-application consultation;
  - a 'front-loaded' design and EIA process with limited scope to amend a proposal once an application is submitted;
  - the incorporation of a wide range of consents and authorisations in a single DCO application in addition to planning permission, including the compulsory acquisition of land;
  - a clearly timetabled process for examining the application once submitted;
  - applications determined in accordance with National Policy Statements approved in Parliament.
- 2.3. The 2008 Act was amended by the Localism Act 2011, which transferred responsibility for determining DCO applications from an Infrastructure Planning Commission to the relevant Secretary of State. Applications are administered by the Planning Inspectorate (PINS), which acts as the 'Examining Authority' on the Secretary of State's behalf.

#### Infrastructure Planning (Business or Commercial Projects) Regulations 2013

- 2.4. The Infrastructure Planning (Business or Commercial Projects) Regulations 2013 (the '2013 Regulations') widened the range of projects that can be consented under the 2008 Act to include a specified list of business and commercial developments, including major

leisure projects that meet specified criteria. In March 2014 LRCH wrote to the Secretary of State for Communities and Local Government (as it then was) to request a direction under s.35 of the 2008 Act allowing the London Resort to be treated as development of national significance, for which a DCO is required.

- 2.5. In a letter dated 9 May 2014, the Secretary of State confirmed that the project constitutes a nationally significant business or commercial project under the 2013 Regulations, and that the project should thus be the subject of a DCO application under the 2008 Act. The London Resort was the first project to be so accepted under the 2013 Regulations.
- 2.6. The Secretary of State for Housing, Communities and Local Government will thus determine the London Resort proposal, having regard to the recommendations of the Planning Inspectorate in its capacity as the Examining Authority.
- 2.7. Unlike other forms of development that can be determined under the 2008 Act, there are no National Policy Statements in respect of business and commercial developments.

#### **Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

- 2.8. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations 2017') set out the procedural requirements for undertaking EIA in relation to projects requiring development consent under the 2008 Act.
- 2.9. Under Regulation 8(1) of the EIA Regulations 2017, a person who proposes to apply for a DCO must, before carrying out consultations under s.42 of the 2008 Act, either request an EIA Screening Opinion or notify the Secretary of State in writing that the applicant will provide an Environmental Statement in respect of the Proposed Development. Regulation 8(1) replaced Regulation Reg. 6(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, under which LRCH confirmed to the Secretary of State that it will provide an environmental statement for the London Paramount Entertainment Resort project (paragraph 2.25 of the LRCH's EIA Scoping Report, November 2014, refers). This intention was reaffirmed in an e-mail between the Applicant's agent and the Planning Inspectorate on 1 June 2020, in accordance with regulation 8(1)(b) of the EIA Regulations 2017. In accordance with regulation 10 of the EIA Regulations 2017, an application for a new scoping opinion was made in June 2020.
- 2.10. Regulation 11 of the EIA Regulations 2017 concerns the procedure to be undertaken to facilitate the preparation of environmental statements and regulation 12 relates to consultation requirements, under which an applicant must publicise and consult on preliminary environmental information. Preliminary environmental information is defined as

*‘...information referred to in regulation 14(2) which –*

*a) Has been compiled by the applicant; and*

*b) Is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development).*

2.11. This current report complies with Regulation 12(2) and forms the Preliminary Environmental Information Report (PEIR) for the purposes of the consultation.

## OTHER RELEVANT PROVISIONS

### Marine and Coastal Access Act 2009

2.12. The UK Marine and Coastal Access Act 2009 (the ‘2009 Act’) committed the UK to an ambitious approach to managing the marine environment. This includes provisions relating to marine functions and activities, marine navigation, migratory and freshwater fish, the establishment of coastal walking routes and rights of access to English and Welsh coastlines more generally. Central to the implementation of these provisions was the creation of the Marine Management Organisation (MMO) – the primary body to have the functions conferred on it by or under the 2009 Act.

2.13. The MMO exists to make a significant contribution to sustainable development in the marine area, and to promote the UK government's vision for clean, healthy, safe, productive and biologically diverse seas.

2.14. The MMO acquired responsibility for licensing arrangements under the 2009 Act. Works relevant to the delivery of the London Resort that might require a marine licence include the removal of existing objects from the river bed, dredging and the construction of a pier, jetty or wharf structures.

### Environmental Permitting (England and Wales) Regulations 2016

2.15. The Environmental Permitting (England and Wales) Regulations 2016 (the ‘2016 Regulations’) provide a unified permitting system embracing integrated pollution prevention and control and waste management.

2.16. The primary aims of the regime are to:

- protect the environment;
- deliver permitting, and compliance with permits and certain environmental targets, effectively and efficiently, in a way that provides increased clarity and minimises the

administrative burden on both the regulator and operators;

- encourage regulators to promote best practice in their operation of facilities.

2.17. The 2016 Regulations make it possible to issue standard permits (encompassing standard conditions) and, in more complex instances, tailored permits. Works and activities potentially required for the construction and operation of the London Resort that might require an Environment Permit include:

- land decontamination and the use of mobile plant for this purpose;
- works affecting licensed landfill sites;
- water discharge,
- works in, under, over or near a main river or in the river's flood plain;
- works on or near the flood defences of a main river;
- waste management operations.

### **Port of London Act 1968**

2.18. The Port of London Act 1968 (the '1968 Act') sets out the purposes of the Port of London Authority (PLA) for administering, preserving and improving the port of London, and for other purposes provided set out within the Act. Notable amendments were made Under the Port of London Acts 1970 and 1982.

2.19. The PLA is responsible for operations covering 95 miles of the River Thames, working to maintain safety, protect and enhance the environment and promote the use of the river for trade and travel.

2.20. Part V of the 1968 Act relates to operations on the River Thames. Under section 66 the PLA issues licences (known as a 'River Works Licence') for any works '*to carry out, construct, place, alter, renew, maintain or retain works . . .*' under or over the River Thames. It is expected The London Resort will require a River Works Licence. The PLA also manages the use of the Thames for passenger and freight traffic for which the London Resort anticipates significantly increased demand.

### **Wildlife and Countryside Act 1981**

2.21. The Wildlife and Countryside Act 1981 (the '1981 Act') contains much of the relevant law on nature conservation and was significantly amended by the Countryside and Rights of Way Act 2000. The 1981 Act gives protection to native species (especially those at threat) and controls the release of non-native species (Part 1), enhances the protection

of Sites of Special Scientific Interest (Part II) and builds upon the rights of way rules in the National Parks and Access to the Countryside Act 1949 (Part III).

- 2.22. As explained in chapters 12 and 13 of this PEIR, a range of protected wildlife species are present in and around the Project Site. The Baker's Hole Site of Special Scientific Interest (SSSI) is located in the Ebbsfleet Valley to the north-west of Ebbsfleet International Rail Station lies within the proposed DCO Order Limits for the current project. Further SSSIs are located nearby, including the Swanscombe Skull SSSI (also designated as a National Nature Reserve) and the West Thurrock Lagoon and Marshes SSSI. Section 28E of the 1981 Act requires that operations affecting SSSIs obtain consent from Natural England.

### **Water Resources Act 1991**

- 2.23. The Water Resources Act 1991 (the '1991 Act') seeks to prevent and minimise the pollution of water, with enforcement a responsibility of the Environment Agency. The 1991 Act introduced water quality classifications and objectives for the first time. Under the 1991 Act it is an offence to cause or knowingly permit any poisonous, noxious or polluting material, or any solid waste to enter any controlled water.
- 2.24. Part IV of the 1991 Act concerns flood defences and is likely to be particularly relevant to the London Resort.

### **Land Drainage Act 1991**

- 2.25. The Land Drainage Act 1991 (the 'Land Drainage Act') consolidated previous legislation relating to internal drainage boards, and to the functions of such boards and of local authorities in relation to land drainage. It has itself been amended, including by the Flood and Water Management Act 2010.
- 2.26. The Land Drainage Act requires that a watercourse be maintained by its owner in such a condition that the free flow of water is not impeded, and thus requires the consent of the relevant body prior to structures (such as culverts or modifying an existing culvert) where this would obstruct the flow in the watercourse. The London Resort is expected to affect watercourses and the provisions of the Land Drainage Act are relevant.

### **Natural Environment and Rural Communities Act 2006**

- 2.27. The Natural Environment and Rural Communities Act 2006 (the '2006 Act') defines Natural England's statutory responsibilities for conserving, enhancing and managing England's natural environment for the benefit of current and future generations.
- 2.28. The 2006 Act makes provision in Part 3 in respect of biodiversity, pesticides harmful to wildlife and the protection of birds, and in respect of invasive non-native species. It sets out enforcement powers and time limits in connection with wildlife protection and prosecution. Part 4 of the 2006 Act concerns SSSIs and part 6 concerns rights of way, which are relevant likewise in the current context.

## **Flood and Water Management Act 2010**

2.29. The Flood and Water Management Act 2010 requires flood and coastal erosion risk management authorities to aim to contribute towards the achievement of sustainable development when exercising their flood and coastal erosion risk management functions. Key aspects include, but are not limited to:

- risk management and responsibilities;
- administration and power of water companies;
- sustainable drainage;
- reservoirs.

2.30. The 2010 Act is relevant to the London Resort given its proximity to the River Thames and associated flood defences, and the need to identify an effective drainage strategy for the Project Site.

## **Conservation of Habitats and Species Regulations 2017**

2.31. The Conservation of Habitats and Species Regulations 2017 (the '2017 Regulations') make provision for the selection, designation, registration and notification of sites to be protected under European Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive'). The 2017 Regulations also implement aspects of the Marine and Coastal Access Act 2009 (see above).

2.32. The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Habitats Directive lays down rules for the protection, management and exploitation of such habitats and species.

2.33. There are no European Protected Sites either within or immediately adjacent to the Project Site, the nearest sites being:

- Thames Estuary and Marshes SPA/Ramsar (approximately 7.5km east);
- Medway Estuary and Marshes SPA/Ramsar (approximately 19km east);
- Swale SPA/Ramsar (approximately 32km east).

2.34. If it is considered that the London Resort is likely to have a significant effect on a protected habitats site (either individually or in cumulatively with other plans or projects) then an Appropriate Assessment of the implications for the site(s), in view of the conservation objectives, will be undertaken. Chapters 12 and 13 of this PEIR address this point.

### **Other law and regulations**

- 2.35. Other law and regulations are reflected, as appropriate, in the relevant chapters of this PEIR.